(3)

No. 99-1855

Supreme Court, U.S.
FILED
JUN 27 2000
CLERK

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1999

WILLIAM H. VIEHWEG
Petitioner

vs.

SUSAN H. MELLO
Respondent

On Petition for Writ of Certiorari
to United States Court of Appeals
for the Eighth Circuit

PETITIONER'S BRIEF IN REPLY

WILLIAM H. VIEHWEG
114 West 2nd South
Mt. Olive, Illinois 62069
Phone: (217) 999-5061
Petitioner

4pp

REPLY ARGUMENT

Respondent does not dispute that for the Eighth Circuit to seal a document subject to the common law right to inspection, the Eighth Circuit must first, as outlined by this Supreme Court, make findings that: 1) are on the record, 2) demonstrate that restriction of the first amendment right of public access is necessitated by a compelling government interest to preserve higher values, 3) demonstrate that the closure is narrowly tailored to that interest and explain why less restrictive alternatives were not appropriate, and 4) are specific enough to enable this superior court to determine whether the Eighth Circuit's decision was proper. Further, the Respondent does not dispute that the Eighth Circuit was fully aware of this long held requirement.

Respondent does not dispute that the common law right to inspection applies to the sealed documents at issue.

Respondent does not dispute that the Eighth Circuit used the most restrictive of closures. As opposed to simple redaction of a document, or the sealing of a single document, or the sealing of a set of documents of similar information, or even the sealing of a class of documents (such as discovery), the court sealed the entire file, court orders included, to all parties and persons, permanently.

Respondent does not dispute that the Petitioner objected to the sealing, that no affidavits accompanied Respondent's

motion to seal, that no hearing was held on the matter, and that no on-the-record findings where made to enable this court to determine whether the summary order sealing the entire file was necessary and appropriately tailored, as required by law.

Respondent does not dispute that the Eighth Circuit, in its prior final opinion, had denied an earlier motion by the Respondent to seal the file. Such a denial is res judicata proof that the file did not require sealing.

Respondent does not dispute that the Missouri Court of Appeals for the Eastern District repeatedly denied her motion to seal its file, even after being informed, by the Respondent, that the Eighth Circuit had granted her identical motion to seal the Eighth Circuit file, and after being advised, by the Respondent, that the rulings should be "consistent". Such a denial is res judicata proof that Petitioner's alleged improper conduct and motivation was not so allegedly improper as to warrant sealing of the file.

Respondent does not dispute that the Eighth Circuit order sealing its entire file is unlawful. Instead, the Respondent argues that it is within the Eighth Circuit's discretion to ignore the law, and that it is within this Court's omnipotent powers to surmise the findings the Respondent desires to have made. The absence of on-record-findings by the Eighth Circuit court is proof that no such findings, as would be required to justify sealing of the entire file, could be made.

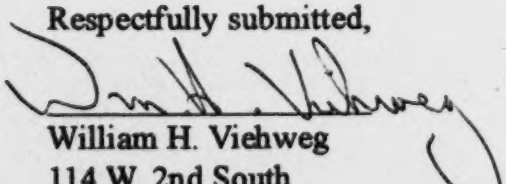
Respondent does not dispute that her own request to view the sealed file necessitated a motion submitted by her attorney, that two days lapsed before the judge approved the motion, and that an additional days notice to the clerk was required prior to the actual viewing. And yet, inexplicably, the Respondent argues that this delay constitutes "immediate" access.

Respondent misrepresents the underlying issue before this Honorable Court as a mere civil conflict between the Petitioner and the Respondent. Per common law, the sealing of court documents is first and primarily an issue of trust between the courts and the public. On any coming day, or number of days, any member, or number of members, of the public, or media, upon being denied immediate access to the sealed file at issue, and upon learning that the entire file was sealed with no supporting on-the-record findings in violation of common law, can, should their mere curiosity be raised, move to unseal the file, and if denied, begin the appeals process, anew, only this time, argued by a competent law firm. What say the Respondent, then? How stands the issue of trust between the courts and the public, then?

CONCLUSION

The Respondent provides no viable legal argument that the Eighth Circuit court's order sealing the file is not in blatant violation of common law. Petitioner's right to immediate access to the file has been wrongfully denied him. This Court's obligation to the public's trust and right to know requires that the petition for writ of certiorari be granted, and that the lower court order be reversed.

Respectfully submitted,



William H. Viehweg
114 W. 2nd South
Mt. Olive, IL 62069
(314) 999-5061
Petitioner